2025 INSC 975

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. OF 2025
[Arising out of SLP (Civil) Nos. 4775-4779/2025]

KAMAL GUPTA & ANR. APPELLANT(S)

VERSUS

M/S L.R. BUILDERS PVT. LTD & ANR. ETC. RESPONDENT(S)

WITH

CIVIL APPEAL NOS. OF 2025
(Arising out of SLP (CIVIL) Nos. of 2025)
(@ DIARY NO. 9078/2025)

J U D G M E N T

ATUL S. CHANDURKAR, J.

1. Leave granted.

2. Two questions arise for consideration in these appeals namely,

(a) Whether it is permissible for a non-signatory to an agreement leading to arbitration proceedings to remain present in such arbitration proceedings?

(b) After appointment of an arbitrator under Section 11 (6) of the Arbitration and Conciliation Act, 1996, whether it is permissible for the Court in such disposed of proceedings to issue any further ancillary directions concerning the arbitration proceedings that have commenced pursuant to appointment of the arbitrator?

3. Facts relevant for considering the aforesaid questions are that on 20.06.2015, an oral family settlement was entered into between members of the Gupta family, namely Pawan Gupta and Kamal Gupta (hereinafter referred to as 'PG' and 'KG'). The said oral agreement was said to be reduced in a Memorandum of Understanding /Family Settlement Deed (hereinafter referred to as 'the MoU/FSD') dated 09.07.2019. This MoU/FSD was not signed by Rahul Gupta, son of KG (hereinafter referred to as 'RG'). Proceedings under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') were filed by PG and another against KG and others seeking appointment of a sole arbitrator for adjudicating disputes between the parties under the MoU/FSD. In the proceedings filed under Section 11(6) of the Act, an application for intervention being I.A. No.13282 of 2023 was filed by RG, a non-signatory, seeking permission to intervene in the said proceedings so as to oppose the maintainability of the same. PG and one other also filed a petition under Section 9 of the Act seeking interim measures

on the basis of the MoU/FSD dated 09.07.2019. A similar application for intervention was filed by RG and one other in these proceedings being I.A. No.12227 of 2023. By the order dated 22.03.2024, Arbitration Petition No.1010 of 2022 seeking appointment of an arbitrator as well as OMP(I) (COMM) No.198 of 2023 being the petition filed under Section 9 of the Act praying for interim measures came to be decided. A sole arbitrator came to be appointed to adjudicate the disputes between the parties. The petition filed under Section 9 of the Act was directed to be treated as an application under Section 17 of the Act for being decided by the sole arbitrator. As regards the prayer for permission to intervene in the proceedings was concerned, the same was not granted by the learned Judge principally on the ground that such intervention was sought by RG, a non-signatory to the MoU/FSD. Arbitration Petition No.1010 of 2022 as well as OMP(I) (COMM) No. 198 of 2023 came to be disposed of accordingly.

4. On 05.08.2024, two non-signatory companies through RG, their authorized representative filed I.A. No. 37567 of 2024 in the disposed of Section 11(6) proceedings making the following prayers:

> "It is humbly prayed before this Hon'ble Court:
>
> 1. Allow this present application of the Intervenor to permit the intervenor in the arbitration proceedings or to be present in the Arbitration Proceedings.

2. Revive the intervention application of the Intervenor as concession given by the parties in the arbitration is being violated by themselves
3. Direct the Arbitrator to let the intervenor to have the access of all pleadings before the Ld. Arbitrator, the orders passed by the Ld. Arbitrator in the present arbitration proceedings and also of the arbitration award passed by the Ld. Arbitrator in the present arbitration proceedings.
4. Any such order which the Court may deem fit and in the interest of justice."

A similar application being I.A. No.39500 of 2024 seeking permission to intervene was also filed by RG and nine other non-signatory companies. Besides the prayer for intervention, a prayer for recall of the order dated 22.03.2024 appointing a sole arbitrator was also made.

5. The prayer made by the non-signatory intervenors in I.A. No.35767 of 2024 to remain present in the arbitral proceedings was considered by the learned Judge. On 07.08.2024, the learned Judge permitted the non-signatory intervenors to be present, either personally or through counsel during the course of arbitration.

6. Thereafter, on 12.11.2024 the various applications as filed were considered. Insofar as the prayer made for recall of the order dated 22.03.2024 was concerned, the learned Judge held that he was not inclined to recall or review the said order as it was passed by another learned Judge. Insofar as the prayer for issuing various directions as made by RG and the other non-signatory companies was concerned,

it was held that RG could remain present in all future proceedings before the sole arbitrator. The order dated 07.08.2024 was made absolute. It was further directed that properties belonging to the intervenor companies mentioned in Annexure A and B of the submissions filed by RG would remain outside the process of arbitration and that the arbitral proceedings qua properties mentioned in Annexure B would be limited to 77% thereof.

7. The parties to the arbitration proceedings, namely PG and KG are aggrieved by the aforesaid directions issued by the learned Judge on 12.11.2024 and have thus challenged the same in these appeals.

8. Mr. C. Aryama Sundaram and Mr. V. Giri, learned Senior Advocates in support of the appeals submitted that the learned Judge had no jurisdiction whatsoever to entertain the interim applications moved by the non-signatories to the MoU/FSD after disposal of the proceedings under Section 11(6) of the Act. After the application filed under Section 11(6) of the Act was decided on 22.03.2024, the Court became *functus officio* and thus had no jurisdiction to entertain the applications as filed. Referring to the provisions of Section 35 of the Act, it was urged that the arbitral award that was to be passed in the arbitration proceedings would bind only the parties to the arbitration proceedings and persons claiming under said parties. Since the intervenors were not parties to the MoU/FSD, they would not be

bound by the award that was to be passed. The direction as issued in the impugned order permitting the non-signatories to remain present in the arbitration proceedings therefore was without jurisdiction. Reference in this regard was made to the decisions in ***Nimet Resources Inc. & Anr. v. Essar Steels Ltd., (2009) 17 SCC 313*** and In Re: ***Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899, 2023 INSC 1066.*** It was further submitted that though the learned Judge held that the prayer for recall or review of the order dated 22.03.2024 was not being entertained, he in fact, proceeded to re-consider the entire matter and issue additional directions. The original order dated 22.03.2024 was referred to in detail and that order formed the basis of the impugned directions as issued. It having been held by the earlier order dated 22.03.2024 that the intervenors had no right to urge their prayers in said proceedings, the impugned direction permitting RG to remain present in the arbitration proceedings amounted to granting relief that was refused earlier. On this count, it was urged that the impugned order was liable to be set aside as being without jurisdiction.

9. It was then submitted that permitting a non-signatory to the MoU/FSD as well as non-party to the arbitration proceedings to remain present during the course of the arbitration proceedings was beyond the

provisions of the Act. If a non-signatory was not to be bound by the arbitral award that was to be passed, there was no justification whatsoever to permit such non-signatory to remain present during the arbitral hearings. Reference was made to the provisions of Section 42A of the Act to urge that such direction breached the principle of confidentiality. The impugned direction also affected the autonomy of the arbitral process and was beyond the provisions of the Act. The same was therefore liable to be set aside. It was further submitted that since the impugned order was without jurisdiction, various directions issued including the recognition of 23% share of RG in the family corpus were without jurisdiction. By granting such declaration, relief was granted to RG which was not permissible in proceedings that had been disposed of on 22.03.2024 with the appointment of the sole arbitrator. In fact, the impugned order had proceeded to review and modify the earlier order that was passed under Section 11(6) of the Act. On these counts, it was urged that the impugned order was liable to be set aside.

10. Mr. Amit Sibal and Mr. J. Sai Deepak, learned Senior Advocates as well as Ms. Bansuri Swaraj learned Advocate for the respondents supported the impugned order. According to them, since it was found that there had been breach of the assurance given by PG and KG as recorded in paragraphs 17 and 18 of the judgment dated 22.03.2024,

the said fact gave rise to the filing of interim applications by the non-signatories. The undertakings as given were binding on PG and KG and it was not permissible for them to take contrary steps in that regard. It was in these facts that the intervenors had invoked the provisions of Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code'). Though the prayer for recall of the judgment dated 22.03.2024 was made, that relief was not granted. The other reliefs granted permitting RG to remain present in the arbitration proceedings and recognising his 23% rights in the family properties were based on the undertaking given by the signatories to the MoU/FSD and thus merely a consequence of the judgment dated 22.03.2024. None of the directions issued in the impugned order could be said to be beyond the scope of the Act or contrary to what was held in the order passed under Section 11(6) of the Act. The respective rights of the parties would be worked out before the sole arbitrator. Since jurisdiction under Section 151 of the Code had been rightly invoked by the Court, there was no reason whatsoever to interfere with the impugned order. It was thus urged that the appeals were liable to be dismissed.

11. We have heard the learned counsel for the parties and we have perused the relevant documentary material on record. In our

considered view, both the questions as framed have to be answered in the negative.

12. In proceedings filed under Section 11(6) of the Act seeking appointment of an arbitrator, the respondents had made a prayer for intervention. The said prayer was duly considered by the learned Judge while appointing a sole arbitrator on 22.03.2024. While declining the prayer for intervention, it was specifically held that the apprehension expressed by the intervenors that in the proposed arbitration proceedings the parties would deal with the properties of the intervenors was misplaced. It was further observed that even if it was assumed that the sole arbitrator was to deal with the properties of the intervenors, the resultant arbitral award would not be binding on them. It was thus held in clear terms that the presence of the intervenors before the sole arbitrator was not essential for adjudication of disputes between the parties to the MoU/FSD, namely PG and KG. In express terms, the intervention applications filed in the arbitration petition as well as similar applications filed in proceedings under Section 9 of the Act came to be dismissed as can be seen in paragraph 34 of the judgment dated 22.03.2024.

13. It is not in dispute that RG and the other intervenors are not signatories to the MoU/FSD that has given rise to the arbitration proceedings. The provisions of Section 35 of the Act are clear

inasmuch as an award passed would only bind parties to the arbitration and persons claiming under them. The expression 'party' has been defined by Section 2(h) of the Act to mean a party to an arbitration agreement. By virtue of the order passed under Section 11(6) of the Act, the sole arbitrator is empowered to adjudicate the disputes between the signatories to the MoU/FSD. Once it is clear that the arbitral award would not bind non-parties to the said MoU/FSD as such parties were not signatories to the said documents, there would be no legal basis whatsoever to permit a non-signatory to the MoU/FSD to remain present in the proceedings before the sole arbitrator. When the arbitration proceedings can take place only between parties to an arbitration agreement and Section 35 of the Act does not make the arbitral award to be passed binding on non-signatories to such agreement, we do not find any legal right conferred by the Act that would enable a non-party to the agreement to remain present in arbitration proceedings between signatories to the agreement. It is not the case of any of the parties to the MoU/FSD that RG and the intervenors were claiming through any of them in the context of Section 35 of the Act. The parties to the agreement being bound by the terms of the agreement and the sole arbitrator being required to resolve the disputes between parties to the agreement, a non-signatory to the agreement would be a stranger to such

arbitration proceedings. Permitting a stranger to remain present in the arbitration proceedings especially when the award to be passed would not be binding on such stranger would be charting a course unknown to law. The remedy, if any, to a party who is not a signatory to the agreement is available under Section 36 of the Act if such award is sought to be enforced against him.

14. At this stage, it is necessary to refer to the provisions of Section 42A of the Act. The arbitrator, the arbitral institution and the parties to the arbitration agreement have to maintain confidentiality of all arbitral proceedings. The legislative intent behind maintaining confidentiality of information is quite clear. Permitting a stranger to the arbitration proceedings to remain present and observe the said proceedings would result in breach of the provisions of Section 42A of the Act. Even on this count the impugned order cannot be sustained.

15. We are therefore of the view that the permission granted to RG, a non-signatory to remain present in all proceedings before the sole arbitrator is without jurisdiction as well as beyond the scope of the Act. The first question stands answered accordingly.

16. It can be seen from the record that the application under Section 11(6) of the Act came to be filed on 22.08.2022. The appointment of a sole arbitrator was sought in terms of Clause 16 of the MoU/FSD dated 09.07.2019. Admittedly, RG and the other intervenors were not

parties to the aforesaid MoU/FSD and hence they were not parties to the application filed under Section 11(6) of the Act. RG and the other intervenors therefore on 13.07.2023 filed I.A. No.13282 of 2024 with a prayer seeking permission to intervene in the proceedings filed under Section 11(6) of the Act.

17. It is to be noted that a separate application under Section 9 of the Act also came to be filed on 13.06.2023 with a prayer to restrain the parties to the MoU/FSD from creating any third party rights or from alienating the immovable properties that were subject matter of the MoU/FSD. In the said proceedings, a similar application came to be filed by RG and other intervenors seeking leave to intervene in those proceedings vide I.A. No.12227 of 2023. The petition filed under Section 11(6) of the Act bearing Arbitration Petition No.1010 of 2022 as well as the petition filed under Section 9 of the Act bearing OMP(I) (COMM) No.198 of 2023 were heard and decided together by the learned Single Judge on 22.03.2024. Insofar as the prayer for appointment of an arbitrator was concerned, a retired judge of this Court was appointed as the sole arbitrator. Insofar as the application filed under Section 9 of the Act was concerned, it was directed that the same be treated as an application under Section 17 of the Act for being decided by the sole arbitrator. Accordingly, Arbitration Petition No.1010 of 2022 and OMP(I) (COMM) No.198 of 2023 came to be

disposed of. This would indicate that no further proceedings were pending on 22.03.2024 after disposal of the same.

18. It appears from the record that much thereafter on 05.08.2024, RG and other intervenors herein filed I.A. No.37567 of 2024 in the disposed of proceedings seeking permission to remain present in the arbitration proceedings. A similar application seeking permission to intervene was also filed in OMP(I)(COMM) No.198 of 2023. Besides the prayer for intervention, a prayer for recall of the order dated 22.03.2024 was also made by virtue of I.A. No.39500 of 2024.

19. In this regard, it may be stated that when the application filed under Section 11(6) of the Act came to be decided on 22.03.2024 and Arbitration Petition No.1010 of 2022 came to be disposed of, there was no question of entertaining any prayer for permission to intervene in the arbitration proceedings. The sole arbitrator having been appointed by virtue of the power conferred by Section 11(6) of the Act on 22.03.2024, the Court did not have any further jurisdiction to entertain a fresh application with a prayer for permission to remain present in the arbitration proceedings. In our view, Interim Application No.37567 of 2024 preferred by the respondents in the disposed proceedings was not liable to be entertained since the Court had become *functus officio* on the conclusion of the proceedings filed under Section 11(6) of the Act to consider such prayer. This aspect

goes to the root of the matter and it is evident that the learned Judge committed an error in entertaining the Interim Application with a prayer for intervention much after disposal of the main proceedings in which the sole arbitrator was appointed.

20. It can be gathered from the order dated 07.08.2024 that RG and other non-signatories were aggrieved by the action of the signatories in dealing with one of the properties that was the subject matter of the undertaking given by them. Assuming the apprehension of RG and other non-signatories to be bonafide, we do not find that it can justify the direction to permit a non-signatory to remain present in the arbitration proceedings. It must be stated that the learned Judge was cognizant of the fact that the Act does not envisage an observer in arbitral proceedings as can be seen from the observations in paragraph 19 of the order dated 07.08.2024. Despite that, such permission has been granted. The direction, even if well-intentioned, does not have any statutory support.

21. The matter can be viewed from another angle. Section 5 of the Act restricts the extent of judicial intervention making it permissible only where it is so provided in Part-I of the Act. In paragraph 80, the Constitution Bench in Re: ***Interplay (supra)*** held as under:

> "80. Section 5 has two facets — positive and negative. The positive facet vests judicial authorities with jurisdiction over arbitral proceedings in matters expressly allowed in or dealt

with under Part I of the Arbitration Act. The flip side to this approach is that judicial authorities are prohibited from intervening in arbitral proceedings in situations where the Arbitral Tribunal has been bestowed with exclusive jurisdiction. This is the negative facet of Section 5. The non obstante clause limits the extent of judicial intervention in respect of matters expressly provided under the Arbitration Act. [Secur Industries Ltd. v. Godrej & Boyce Mfg. Co. Ltd., (2004) 3 SCC 447] In Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd. (2022) 1 SCC 75, a Bench of three Judges of this Court observed that the

> "non obstante clause is provided to uphold the intention of the legislature as provided in the Preamble to adopt UNICITRAL Model Law and Rules, to reduce excessive judicial interference which is not contemplated under the Arbitration Act."

It was further observed that every provision of the Act ought to be construed in view of Section 5 to give true effect to the legislative intention of minimal judicial intervention.

22. The Constitution Bench further held that the Act is a self-contained Code with regard to matters dealing with appointment of arbitrators, commencement of arbitration, making of an award and challenges to the arbitral award as well as execution of such awards. In paragraph 85, it was stated as under:

> "85. The Arbitration Act is a self-contained code inter alia with respect to matters dealing with appointment of arbitrators, commencement of arbitration, making of an award and challenges to the arbitral award, as well as execution of such awards. [Pasl Wind Solutions (P) Ltd. v. GE Power Conversion (India) (P) Ltd., (2021) 7 SCC 1; Kandla Export Corpn. v. OCI Corpn., (2018) 14 SCC 715

> When a self-contained code sets out a procedure, the applicability of a general legal procedure would be impliedly excluded. [Subal Paul v. Malina Paul, (2003) 10 SCC 361] Being a self-contained and exhaustive code on arbitration law, the Arbitration Act carries the imperative that what is permissible under the law ought to be performed only in the manner indicated, and not otherwise. Accordingly, matters governed by the Arbitration Act such as the arbitration agreement, appointment of arbitrators and competence of the Arbitral Tribunal to rule on its jurisdiction have to be assessed in the manner specified under the law. The corollary is that it is not permissible to do what is not mentioned under the Arbitration Act. Therefore, provisions of other statutes cannot interfere with the working of the Arbitration Act, unless specified otherwise."

23. It thus becomes clear that firstly, the sole arbitrator having been appointed under Section 11(6) of the Act on 22.03.2024, nothing further was required to be done in exercise of jurisdiction under Section 11(6) thereafter. The prayer made by RG and other intervenors to permit them to remain present in the arbitration proceedings before the sole arbitrator was not liable to be entertained as such request went beyond the scope of Section 11(6) of the Act. The provisions of Section 151 of the Code could not have been invoked in this regard. Further, the Court had become *functus officio* after the sole arbitrator was appointed and the proceedings under Section 11(6) of the Act had been disposed of. Even the spirit of Section 5 of the Act precluded the Court from entertaining such request which does not find place in Part-I of the Act. Moreover, the

impugned direction runs counter to Section 42A of the Act. The second question stands answered accordingly.

24. For all the aforesaid reasons, in our view the applications filed by RG and other non-signatory companies in the disposed of proceedings were misconceived. The attempt on their behalf to re-open the proceedings amounted to an abuse of the process of law. The applications deserved outright rejection. The learned Judge erred in entertaining the same on merits.

25. Accordingly, the order dated 12.11.2024 passed on the various interim applications is set aside. The parties to the present proceedings are free to work out their rights in accordance with the order dated 22.03.2024. The appeals are allowed in aforesaid terms. The respondents shall pay costs quantified at Rs.3,00,000/- (Rupees Three Lakhs) to the Supreme Court Advocates On-Record Association within a period of two weeks.

……..……..J.
[PAMIDIGHANTAM SRI NARASIMHA]

……..……..J.
[ATUL S. CHANDURKAR]

NEW DELHI,
AUGUST 13, 2025.